



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

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MRA-3/52307

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 4, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Barron County Dept. of Social Services in regard to medical assistance, a hearing was held on March 15, 2002, at Barron, Wisconsin.

The issue for determination is whether the community spouse's resource limit can be increased above \$50,000 so that she can generate income to meet her minimum monthly needs.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Judy Ferber, ESS  
Barron County Dept Of Human Services  
Courthouse Room 338  
330 E LaSalle Ave  
Barron, WI 54812

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of a nursing home in Barron County.
2. The petitioner entered the nursing home on January 3, 2002.

3. The petitioner applied for institutional medical assistance on January 14, 2002. The county agency denied the application because the combined assets of the petitioner and his wife exceeded \$52,000.
4. The petitioner and his spouse had \$78,000 in assets at the time of the hearing. These assets consisted mainly of checking and savings accounts that paid small amounts of interest.
5. The petitioner receives \$631 in social security each month and his wife receives \$249. They also receive \$78.66 in income each month from checking and savings accounts and \$190 for leasing their farm land.
6. All of the assets of the petitioner and his wife produce some income.

### **DISCUSSION**

The federal Medicare Catastrophic Coverage Act of 1988 is designed to protect from destitution a person whose spouse enters a nursing home and receives medical assistance. The law allows couples with less than \$100,000 in assets to assign \$50,000 to the community spouse. §49.455(6)(b)3, Wis. Stats. *MA Handbook*, Appendix §23.4.2. Because an institutionalized person can have up to \$2,000 in assets, couples in this position generally can have up to \$52,000 in assets and still maintain one of the spouse's eligibility for medical assistance. Nevertheless, if the community spouse's income falls short of her needs, she may request through a fair hearing that the asset limit be increased to produce more income. The administrative law judge must assign sufficient assets to generate "enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance..." §49.455(8)(d), Stats. The minimum monthly maintenance needs allowance currently is the lesser of \$2,175 or \$1,990 plus excess shelter costs. *MA Handbook*, Appendix §23.6.0; *BPS Operations Memo*, 02-23; issued March 19, 2002. Excess shelter costs are shelter costs above \$597. *Id.*

The petitioner and his spouse clearly need assets to provide additional income. They receive a total of \$1,070 from social security and farm rent. My concern is that their \$78,000 in assets are in checking and savings accounts that produce less than \$80 per month, which leaves the spouse well below the minimum monthly maintenance needs allowance. Because assets must produce income that is actually available to support the spouse's monthly needs, money must be placed in fairly liquid investments that generally pay lower rates than paid by more fixed investments such as stocks. *See*, DHA Final Decision No. MRA - 68/48394. But there are options such as money market certificates that, if invested so that they become due at different times, are available when needed and pay more than the 1% return that the petitioner and his spouse earn on their savings and checking account. I am not going to deny their request to assign their assets to the spouse because all of the assets are earning some money, but I suggest that the spouse talk to someone at their bank about moving the assets into higher paying accounts.

Eligibility for medical assistance begins "on the date on which all eligibility requirements were met, but no earlier than the first day of the month 3 months prior to the month of application." §HFS 103.08, Wis. Admin. Code. The petitioner's eligibility began on January 3, 2002 because that is the date that he moved into the nursing home and his financial condition has not changed significantly since then. I note that medical assistance rules require the petitioner and his wife to legally and actually transfer all assets into the wife's name by his next review date. She should call Ms. Ferber or another county economic support specialist if she has any questions about this.

### **CONCLUSIONS OF LAW**

1. The petitioner can transfer his assets to his wife because she needs income from the assets to raise her income closer to the minimum monthly needs allowance.

2. The petitioner is financially eligible for medical assistance.

**NOW, THEREFORE, it is**

**ORDERED**

That this matter be remanded to the county agency with instructions that within 10 days of the date of this decision it shall certify the petitioner as eligible for institutional medical assistance retroactive to January 3, 2002.

**REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau  
Claire, Wisconsin, this 30th day of  
April, 2002

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/sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals  
71/MDO